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shall have certain restrictions as determined by the NRCS State Conservationist, in consultation with the State technical committee, in order to protect, during the nesting season, birds in the local area that are in significant decline or are conserved in accordance with Federal or State law; and

(3) Fire rehabilitation and construction of firebreaks, fences, corrals, watering facilities, seedbed preparation and seeding, and any other related facilitating practices, as determined by USDA, needed to protect and restore the grassland functions and values.

(i) Any activity that would disturb the surface of the land covered by the easement is prohibited except for:

(1) Common grazing management practices which are carried out in a manner consistent with maintaining the functions and values of grassland common to the local area, including fire rehabilitation and construction of firebreaks, construction of fences, and restoration practices,

(2) Maintenance and necessary cultural practices associated with common grazing practices, and

(3) Other activities that result in only a temporary disturbance to the surface of the land where USDA determines that the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources protected under an easement or rental agreement. Such a temporary disturbance, being of a short duration and, not to exceed the extent of time ordinarily necessary for completing an activity, as determined by USDA.

(j) Rental agreement contracts may be terminated by USDA without penalty or refund if the original participant dies, becomes incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert rental agreements to an easement, provided that the easement is for a longer duration than the rental agreement, funds are available, and the project meets conditions established by the USDA. Land cannot be enrolled in both a rental agreement option and an easement enrollment option at the same time. The rental agreement shall be deemed ter-

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minated the date the easement is recorded in the local land records office.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly-owned land is not eligible.

(b) Land is eligible for funding consideration if the NRCS State Conservationist determines that the land is:

(1) Grassland, land that contains forbs, or shrubs (including native and naturalized rangeland and pastureland); or

(2) The land is located in an area that has been historically dominated by grassland, forbs, or shrubs, and the State Conservationist, with advice from the State technical committee, determines that it has potential to provide habitat for animal or plant populations of significant ecological value, if the land is—

(i) Retained in the current use of the land; or

(ii) Restored to a native or naturalized grassland conditions.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental agreement.

(d) Forty contiguous acres is the minimum acreage eligible for enrollment in GRP. However, less than 40 acres may be accepted if the USDA, with advice from the State technical committee, determines that the enrollment of acreage meets the purposes of the program and grants a waiver. USDA, at the State level, may also establish a higher minimum acreage level. USDA will review any minimum acreage requirement other than the statutory baseline level of 40 acres to ensure, to the extent permitted by law, that this requirement does not unfairly discriminate against small farmers.

(e) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract or easement. This land becomes eligible for enrollment in GRP when the existing contract expires or is terminated and the grassland values and functions are no longer protected.

(f) Land on which gas, oil, earth, or other mineral rights exploration has

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been leased or is owned by someone other than the prospective GRP participant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

§ 1415.6 Participant eligibility.

To be eligible to participate in GRP an applicant:

- (a) Must be a landowner for easement participation or be a landowner or have general control of the eligible acreage being offered for rental agreement participation;
- (b) Agree to provide such information to USDA that the Department deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;
- (c) Meet the Adjusted Gross Income requirements in 7 CFR part 1400; and
- (d) Meet the conservation compliance requirements found in 7 CFR part 12.

§ 1415.7 Application procedures.

(a) Any owner or operator or tenant of eligible land that meets the criteria set forth in §1415.6 of this part may submit an application through a USDA Service Center for participation in the GRP. Applications are accepted throughout the year.

(b) By filing an Application for Participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values and for other activities that are necessary for the USDA to make an offer of enrollment. Generally, the applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental agreement for which they seek to enroll their land. Rental agreements may be for 10-years, 15-years, 20-years, or 30-years; easements may be for 30-years, permanent, or for

the maximum duration authorized by State law.

§ 1415.8 Establishing priority for enrollment of properties.

(a) USDA, at the national level, will provide to USDA offices at the State level, broad national guidelines for establishing State specific project selection criteria.

(b) USDA, at the State level, with advice from the State technical committee, establishes criteria to evaluate and rank applications for easement and rental agreement enrollment following the guidance established in paragraph (a) of this section.

(c) Ranking criteria will emphasize support for:

- (1) Native and naturalized grassland;
- (2) Protection of grassland from the threat of conversion;
- (3) Support for grazing operations; and
- (4) Maintenance and improvement of plant and animal biodiversity.

(d) When funding is available, USDA, at the State level, will periodically select for funding the highest ranked applications based on applicant and land eligibility and the State-developed ranking criteria.

(e) States may utilize one or more ranking pools, including a pool for special project consideration such as establishing a pool for projects that receive restoration funding from non-USDA sources.

(f) The USDA, with advice from the State technical committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The FSA State Executive Director and NRCS State Conservationist, with advice from the State technical committee, will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, USDA may select a lower ranked application that can be fully funded. Applicants may choose to change the duration of the easement or agreement or reduce acreage amount offered if the application ranking score is not reduced below that